

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket HWCA 00/01-4008
)	
Denova Environmental, Inc.)	IMMINENT AND SUBSTANTIAL
2610 North Alder Avenue)	ENDANGERMENT ORDER
Rialto, California 92377)	
EPA ID. No. CAT080022148)	
)	
Respondent.)	Health and Safety Code
)	Section 25187(f)

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Imminent and Substantial Endangerment Order (Order) to Denova Environmental, Inc. (Respondent).

1.2. Site. Respondent operates an off-site hazardous waste storage and transfer facility at the following site: 2610 North Alder Avenue, Rialto, California 92377 (Site). Respondent's office and mailing address is 2824 North Locust Avenue, Rialto, California 92377. A map of the Site is attached as Exhibit 1. The Site is surrounded by residential and industrial land uses. Residences are located within 750 yards of the Site.

1.3. Permit/Interim Status. The Department authorized Broco, Inc. to manage hazardous waste at the Site by interim status document (ISD) issued on September 18, 1981. Broco Environmental, Inc. purchased the Site from Broco, Inc. in 1992. On May 15, 2000, the Department approved with changes the transfer of interim status authorization from Broco Environmental, Inc. to the Respondent. Respondent is authorized to accept a variety of hazardous wastes at the Site, including waste explosives, reactives, flammables, oxidizers, and corrosives. Respondent is authorized to store, transfer, and/or consolidate hazardous wastes at the Site.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code (HSC) authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto. HSC section 25187(f) authorizes the Department to issue an Order that takes effect upon issuance, if the Department finds that the violations associated with the Order may pose an imminent and substantial endangerment to the public health or safety or the environment.

1.5. Recent Enforcement History.

1.5.1. The Department conducted inspections at the Site in April and July, 1999. The Department issued an amended Enforcement Order dated June 13, 2000 (Enforcement Order), citing Respondent for numerous violations of the Hazardous Waste Control Law, HSC section 25100 et seq (HWCL) observed during the inspections, including but not limited to: exceeding authorized storage capacity; failing to minimize the possibility of a release; storing waste in unauthorized locations; and failing to maintain adequate operating records. Through a Stipulation and Order dated September 13, 2000 (Stipulation), the Department and Respondent settled the violations alleged in the Enforcement Order. In the Stipulation, Respondent admitted the violations cited in the Enforcement Order for all purposes in any civil or administrative action or proceeding involving the Department and Respondent. In the Stipulation, Respondent agreed to correct the violations cited in the Enforcement Order.

1.5.2. On January 24, 2001, and February 6, 7, 8 and 9, 2001, the Department assisted the Federal Bureau of Investigation (FBI) in an investigation of Respondent's hazardous waste operations. During this investigation, the Department observed numerous serious and repeat violations of the HWCL.

During the investigation unstable explosive wastes were discovered at the Site, and were detonated by the FBI and San Bernardino County Sheriff's Department Bomb/Arson Detail.

1.5.3. On or about February 16 and 20, 2001, the Department investigated a fire in the intermodal container #3 (Oxidizer Bay) at the Site. The Department's investigation revealed that on or about February 15, 2001, Respondent commingled incompatible oxidizers and organics near the Oxidizer Bay. As a result, a fire occurred in the Oxidizer Bay on February 16, 2001, releasing hazardous constituents and presenting the potential for a larger conflagration at the Site.

1.5.4. On February 28, 2001 and March 1, 2001, the Department conducted a Compliance Evaluation Inspection at the Site. During the inspection, the Department observed numerous violations of the HWCL, including the same violations cited in the Enforcement Order.

1.5.5. On March 1, 2001, the Department and the San Bernardino County Sheriff's Department Bomb/Arson Detail discovered additional potentially unstable explosives in the explosive magazine complex at the Site. These explosives included four bulging containers of PETN and five one-pound containers of initiating explosives which were partially

dehydrated.

DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1. The Respondent violated HSC section 25200.5(b) and/or Section 7.1 of the Stipulation, in that on numerous occasions, Respondent exceeded the authorized design storage capacity for the Site of 26,500 gallons of hazardous waste, to wit:

2.1.1. On February 7, 2001, the Department conducted a hazardous waste inventory at the Site, and observed that Respondent stored over 60,000 gallons of hazardous waste at the Site.

2.1.2. On February 28, 2001, the Department conducted a hazardous waste inventory at the Site, and observed that the Respondent stored approximately 58,000 gallons of hazardous waste at the Site.

2.1.3. On January 23, 2001, the Department obtained the Respondent's operating records and statements from Respondent's employees that showed the Respondent stored approximately 41,000 gallons of hazardous waste at the Site.

2.1.4. On February 16, 2001, the Respondent conducted

a hazardous waste inventory at the Site that showed the Respondent stored at least 32,808 gallons of hazardous waste at the Site.

2.1.5. The Department reviewed the Respondent's operating records that showed the Respondent exceeded its authorized design storage capacity on at least the following dates: August 27, 2000, August 28, 2000, September 6, 2000, September 8, 2000, September 11, 2000, September 12, 2000, September 14, 2000, October 1, 2000, October 2, 2000, October 9, 2000, December 4, 2000, December 5, 2000, December 6, 2000, and December 14, 2000.

2.2. The Respondent violated Title 22 of the California Code of Regulations (Cal. Code Regs.) sections 66265.17(b)(1), 66265.177(a), and 66265.31, in that on or about February 15, 2001, Respondent commingled incompatible wastes and materials in a manner that generated extreme heat or pressure, fire or explosion or violent reaction, or otherwise threatened human health or the environment, to wit:

2.2.1. On or about February 15, 2001, Respondent commingled a number of oxidizers and unknown organic chemicals in or near the Oxidizer Bay at the Site. Commingling oxidizers and organic chemicals may cause the combustion of organic chemicals.

As a result of Respondent's commingling of these wastes, a fire occurred on February 16, 2001, releasing hazardous constituents and presenting the potential for a larger conflagration at the Site.

2.3. The Respondent violated Title 22, Cal. Code Regs., section 66265.31, in that on or about February 7, 16, 20, and 28, 2001, Respondent failed to maintain or operate the facility to minimize the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents at the site, to wit:

2.3.1. On or about February 7, 2001, the Department discovered that Respondent had stored in an unauthorized location approximately 16 feet south of intermodal container # 10 (Reactive Bay) at the Site the following: a) at least 12 5-gallon containers of hazardous waste containing wipes contaminated with lead styphnate and lead azide; b) one severely corroded 55-gallon drum of hazardous waste contaminated with lead azide; and c) several other containers of explosive hazardous waste. The 12 5-gallon containers were not labeled, and were stored at the Site for several years. Four additional containers of hazardous waste containing wipes contaminated with lead styphnate and lead azide were being stored in the explosive magazine complex (an

unauthorized location) at the Site.

Both lead styphnate and lead azide are initiating explosives used in detonators. If these chemicals are allowed to dehydrate, they become highly unstable and extremely shock sensitive. On February 8 and 9, 2001, these potentially unstable and shock sensitive explosive hazardous wastes were detonated by the FBI and San Bernardino County Sheriff's Department Bomb/Arson Detail.

2.3.2. On or about February 16, 2001, the Respondent stored in the Oxidizer Bay at the Site two drums of hazardous waste containing peroxides that were bulging. Improperly stored peroxides produce oxygen gas, which may cause a build-up of pressure, and the threat of fire and other reactions due to the high concentration of oxygen. A bulging drum indicates that the contents of the drum have generated heat and/or gasses, and that the drum is under very high pressure and is liable to burst and release its contents.

2.3.3. On or about February 7, 2001, the Respondent stored on the Recyclables Pad at the Site a bulging, unlabeled 55-gallon poly drum containing waste whose pH was approximately 12. The bottom of the drum was distended from pressure such that the drum was tilting to the side. A bulging drum indicates that

the contents of the drum have generated heat and/or gasses, and that the drum is under very high pressure and is liable to burst and release its contents.

2.3.4. On or about February 28, 2001, Respondent stored hazardous waste (40 boxes of waste explosives) together with potentially unstable, shock sensitive explosives and other high explosives in magazine #7 (unauthorized location) at the Site. If the shock sensitive explosives detonate and initiate explosions among the other high explosives, hazardous constituents may be released to the environment.

2.3.5. On or about February 28, 2001, the Department observed that four drums containing high explosives (PETN) in magazine #7 were bulging. A bulging drum indicates that the contents of the drum have generated heat and/or gasses, and that the drum is under very high pressure and is liable to burst and release its contents.

2.3.6. On or about February 28, 2001, Respondent stored five 1-pound bottles of inadequately hydrated initiating explosives in magazine #10 at the Site. Inadequately hydrated initiating explosives are highly shock and friction sensitive and could result in detonation which would release hazardous constituents into the environment.

2.3.7. On or about February 20 and 28, 2001, Respondent stored three 55-gallon drums of hazardous waste tear gas canisters in the Quality Assurance Pad (QA Pad) area of the Site. Some of these canisters are duds and may still contain tear gas.

2.3.8. On or about January 23, and February 6, 7, 8, 9, 20, 28 and March 1, 2001, the Department observed that the Respondent stored at least three roll-off bins containing hazardous waste in unauthorized locations at the Site that had released and were releasing liquids directly onto the unpaved dirt and gravel portion of the Site.

2.4. The Respondent violated Title 22, Cal. Code Regs., section 66265.13(a), in that on or about February 7, 16 and 28, 2001, the Department determined that the Respondent failed to obtain detailed chemical and physical analyses of representative samples of the wide range of wastes Respondent accepted at the Site.

2.5. The Respondent violated Title 22, Cal. Code Regs. section 66265.177(c), in that on or about February 7 and 28, 2001, Respondent stored incompatible wastes together without any means of separation, to wit: On the Recycling Pad, Respondent stored drums of acids, bases, flammables, oxidizers, reactives

and toxics together without any means of separation. On the QA Pad, Respondent stored drums of oxidizers, acids, explosives, and flammables together without any means of separation.

2.6. The Respondent violated Title 22, Cal. Code Regs. section 66265.73(b)(1)(2) and (3) and Section 7.1 of the Stipulation, in that Respondent failed to record in the operating record a description and the quantity of each hazardous waste received, and its methods and dates of transfer and storage, and the location of each hazardous waste within the facility and the quantity at each location, to wit:

2.6.1. On or about February 7, 2001, Respondent failed to record in its operating record at least 12 5-gallon containers and one 55-gallon container of hazardous waste at the Site containing wipes contaminated with lead styphnate and lead azide. The containers were not labeled as hazardous waste.

2.6.2. On or about February 15, 2001, Respondent failed to record the type and quantity of solid oxidizers and organics which were commingled and consolidated near the Oxidizer Bay at the Site. As a result of Respondent's commingling these wastes, a fire occurred in the Oxidizer Bay on February 16, 2001.

2.6.3. On or about February 28, 2001, Respondent failed to accurately maintain operating records for waste explosives, to wit: a) at least seven containers of explosive wastes did not

have bar codes or hazardous waste labels; b) at least 2,000 pounds of waste explosives in magazines 6 were incorrectly recorded as being located in magazine #5; c) at least 1,500 pounds of hazardous waste explosives in magazine #7 were not recorded in the operating records.

2.6.4. On or about February 16, 2001, the Respondent conducted an inventory of containers of hazardous wastes that did not have bar codes or other labels. The Respondent's inventory documented over 50 containers without barcodes at the Site.

2.7. On or about January 23, February 6, 7, 8, 9, 20, 28 and March 1, 2001, the Respondent violated HSC section 25200.5 (b) and section 7.1 of the Stipulation, in that Respondent stored hazardous wastes in unauthorized locations at the Site, including, but not limited to: tractor trailers, roll-off bins, and explosive magazines.

IMMINENT AND SUBSTANTIAL ENDANGERMENT DETERMINATION

3.1. Hazardous Wastes Present at the Site. The Department has found that as of February 28, 2001, Respondent had approximately 58,000 gallons of hazardous waste on the Site, including corrosive, flammable, toxic, reactive and explosive wastes.

3.1.1 The Department has found that Respondent has on

numerous occasions exceeded its authorized storage capacity, thereby increasing the likelihood that hazardous waste will be improperly managed.

3.1.2. The Department has found that Respondent improperly commingled incompatible waste oxidizers and other hazardous wastes, resulting in an uncontrolled reaction and fire.

3.1.3. The Department has found that Respondent is improperly storing large quantities of unstable waste explosives together with high explosives, and hazardous waste at the Site. There is a threat that the unstable explosive wastes would detonate the high explosives, and release hazardous constituents to the environment.

3.1.4. The Department has found that Respondent has stored on Site, in unauthorized locations, reactive and shock sensitive chemicals and other explosives for which Respondent has not maintained records and which Respondent has stored in unlabeled containers. These facts increase the likelihood that the explosives will be mishandled and explode. Some of this waste was detonated on February 8 and 9, 2001 by the FBI and San Bernardino County Sheriff's Department Bomb/Arson Detail.

3.1.5. The Department has found that Respondent has stored hazardous waste containers directly adjacent to containers

of incompatible hazardous waste.

3.1.6. The Department has found that the manner in which hazardous wastes are being handled, transferred, and/or stored by Respondent at the Site has resulted and may result in actual or threatened release of hazardous waste or hazardous constituents into the environment.

3.2. Health Effects. There is a present threat to the employees and the surrounding human population of acute trauma from the release of highly acidic or toxic liquids, gases, vapor, dusts or mists, due to explosion or fire involving the hazardous wastes at the Site. An additional threat is the exposure of people and the contamination of land surrounding the Site by hazardous waste constituents and the by-products of fire or explosion.

3.3. Routes of Exposure. In the event of a fire or explosion at the site, the expected routes of exposure are inhalation, ingestion, and dermal absorption. Smoke, fumes, and solid particles of hazardous waste may be spread over a wide area surrounding the Site, including residential areas within 750 yards. Toxic constituents of the hazardous waste, or toxic by-products of fires or explosions may be inhaled as smoke, fumes, gases, or mists; or may contaminate food, soil, and objects, and

be ingested or absorbed through the skin. Direct contact with acids or caustics released from the Site due to improper management of hazardous wastes can cause burns, injury, and property damage.

3.4 Population at Risk. The population at risk includes those residents in the area surrounding the Site and any person or employee at the Site.

3.5 Determination. The Department hereby determines that the violations associated with this Order may pose an imminent and substantial endangerment to the public health or safety or to the environment. The Department also determines that the provisions of this order are so related that the public health, safety, or the environment, can be protected only by immediate compliance with the order as a whole. These determinations are based on the above findings.

SCHEDULE FOR COMPLIANCE

4. Based on the foregoing Determination Of Violations and Imminent and Substantial Endangerment Determination, IT IS HEREBY ORDERED THAT:

4.1. Effective immediately, Respondent shall operate at the Site within the authorized design storage capacity of

26,500 gallons of hazardous waste.

4.1.1. Effective immediately, Respondent shall cease accepting hazardous waste at the Site until the hazardous waste inventory at the Site is below the authorized design storage capacity of 26,500 gallons.

4.1.2. Within 7 days of the effective date of this Order, Respondent shall submit to the Department an inventory of all of the hazardous wastes on the Site, with a map showing the locations and quantities of hazardous waste at each location, and bar code and incoming manifest number for each waste.

4.2. Effective immediately, Respondent shall cease consolidating, commingling, bulking, or mixing any potentially incompatible hazardous wastes at the Site.

4.3. Effective immediately, Respondent shall allow employees of the Department and of the Department's contractors access to the Site for the purpose of determining the extent of contamination and damage at the Oxidizer Bay (as discussed in paragraph 1.5.3.), and for the purpose of overseeing the assessment and remediation of the Oxidizer Bay.

4.4. Effective immediately, Respondent shall cease storing containers of incompatible hazardous waste adjacent to each other without adequate separation.

4.5. Effective immediately, Respondent shall store hazardous waste only within the existing authorized storage units at the Site, i.e., the intermodal containers and four explosive igloos at the Site. For staging purposes only, hazardous wastes may be located on the RCRA pad, non-RCRA pad, and Quality Assurance Pad for a maximum of 48 hours.

4.6. Effective immediately, Respondent shall not handle, move, or otherwise disturb any potentially unstable explosive until the Department approves a work plan submitted by Respondent as described in paragraph 4.7. that describes how such unstable explosives will be managed safely.

4.7. Within 14 days of the effective date of this Order, Respondent shall: a) conduct an inventory of all explosives at the Site; b) prepare an assessment of the stability of all explosives at the Site; and c) submit a work plan to the Department describing how any unstable explosives will be managed safely.

4.8. Effective immediately, Respondent shall follow waste analysis procedures as required by Title 22, Cal. Code Regs., section 66265.13 and the Waste Analysis Plan for determining the proper and safe manner to store, transfer, and/or commingle hazardous waste at the Site.

4.9. Effective immediately, Respondent shall record in

the operating record for the Site the description and quantity of all the hazardous waste at the Site; the location of each hazardous waste at the Site; and the methods and dates of its transfer, or storage at the Site. Respondent shall record the results of waste analyses for the wastes it receives or sends off site.

4.10. Effective immediately, Respondent shall operate the Site in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous constituents at the Site.

4.11. Within 14 days of the effective date of this Order, Respondent shall submit to the Department a report documenting all corrective actions taken to address the violations identified in this Order.

OTHER PROVISIONS

5.1. Submittals. All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Kit Davis, Branch Chief
Task Force Support and Special Investigations Branch
Department of Toxic Substances Control
10151 Croyden Way, Suite 3
Sacramento, California 95827-2106

and

Philip Blum, Unit Chief
Task Force Support and Special Investigations Branch

1011 North Grandview Avenue
Glendale, California 91201

and

Karen Baker, CEG, CHG, Chief
Geology and Corrective Action Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

5.2. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Task Force Support and Special Investigations Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

5.3. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified, or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

5.4. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

5.5. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating a further imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

5.6. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order,

Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

5.7. Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

5.8. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent

shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

5.9. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

5.10. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are

submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

5.11. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

5.12. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

5.13. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

5.14. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by HSC section 25188 and other applicable provisions of law.

5.15. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees,

successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

5.16. Time Periods. "Days" for purposes of this Order means calendar days.

PENALTY

6. The Department is not assessing a penalty at this time in conjunction with this Order. The Department reserves all its rights to impose any fines, penalties, or other assessments by all lawful means and to take any other actions or pursue any other remedies available.

RIGHT TO A HEARING

7. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent. Under HSC section 25187(f), a request for a hearing shall not stay the effect of this Order.

EFFECTIVE DATE

8. Pursuant to HSC section 25187(f), this Order is effective immediately on the date of issuance indicated below. As stated in Section 3 of this Order, the Department finds that the violations described in Section 2 of this Order may pose an imminent and substantial endangerment to the public health or safety or the environment.

Date of Issuance__[9 March 01]_____

____[Original signed by]____

Kit Davis, Branch Chief
Task Force Support and Special
Investigations Branch
Department of Toxic Substances Control
10151 Croyden Way, Suite 3
Sacramento, Ca 95827-2106